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BEFORE THE
**FEDERAL COMMUNICATIONS COMMISSION**
WASHINGTON, D.C. 20554



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| In the Matter of | ) | |
| | ) | |
| Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 | ) | CC Docket No. 96-98 |
| | ) | |
| Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers | ) | CC Docket No. 95-185 |



To: The Commission

## REPLY OF COX COMMUNICATIONS, INC. TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits this reply to the oppositions to its petition for reconsideration of the Commission's *First Report and Order* in the above-referenced proceeding.[1/]

### I. Introduction

The *First Report and Order* created a pro-competitive, balanced framework for the development of the local telephony marketplace. Consequently, throughout these proceedings Cox has sought clarification from the Commission in four limited areas. First, Cox sought clarification that the principle of symmetrical compensation for transport and termination applies whenever two interconnected switches serve the same function. Second, Cox asked

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1/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order,* CC Docket No. 96-86, CC Docket No. 95-185, GN Docket No. 93-252, FCC 96-325, rel. Aug. 8, 1996 (the "*First Report and Order*").

the Commission to clarify that new entrants have the right to determine the rating points assigned to the NXX codes they use. Third, Cox asked the Commission to require large incumbent local exchange carriers ("LECs") to file their existing interconnection arrangements with state commissions on an expedited basis. The record in the proceeding that led to the *First Report and Order* and the responses to Cox's petition demonstrate that all three of these requests should be granted. Finally, the Commission should further clarify the distinct pricing standards in Section 252(d)(1) for unbundled elements and in Section 252(d)(2) for reciprocal compensation.

## II. Compensation for Transport and Termination Should Be Symmetrical and Based Solely on Additional Cost.

### A. Symmetrical Compensation Should Be Available Whenever Two Switches Serve Equivalent Functions.

As the Commission recognized in the *First Report and Order,* symmetry is a key element in the reciprocal compensation obligation imposed by the 1996 Act.[2/] Cox sought a simple but important clarification to the symmetry requirement by asking the Commission to conclude that symmetry was required whenever two interconnected switches served equivalent functions.[3/] This clarification is appropriate as a matter of sound economic policy. Incumbent LECs nevertheless oppose it. Their arguments are unsound and Cox's clarification should be adopted.

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2/ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (the "1996 Act").

3/ Cox Petition at 4-8.

First, most parties seeking competitive entry for the provision of local exchange service agree that it is critical for the Commission to affirm the symmetry principle.[4/] As several of these parties note, symmetry should be required whenever two interconnected switches provide the same technical switching functions or when they serve comparable areas.[5/] In either case, the two switches are functionally equivalent.

Nevertheless, incumbent LECs argue that compensation should be based on the specific path followed by a particular call, rather than on the functionality provided by the switch.[6/] While this approach certainly would benefit incumbent LECs, it is anticompetitive and economically irrational. Incentives for inefficient behavior have no place in the rules intended to produce competitive interconnection.

As described in Cox's previous filings, asymmetrical compensation is an artifact of uneven bargaining power, and would not occur if there were an efficient market for transport and termination.[7/] In an efficient market, one key determinant of the price paid for transport and termination is the functionality provided. Moreover, functionality is independent of the technology used to provide it. If the same functions can be provided by one switch serving a wide area, or by a hierarchy of tandems and end offices, then each carrier should receive the same compensation for transport and termination, just as manufacturers of computer memory

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4/ *See, e.g.*, National Cable Television Association ("NCTA") Opposition at 16; Comcast Cellular Communications, Inc. and Vanguard Cellular Systems Opposition at 11-12; Sprint Spectrum Opposition at 4-6; Association for Local Telecommunications Services Opposition at 12.

5/ *See, e.g.*, NCTA Opposition at 18.

6/ *See, e.g.*, Ameritech Opposition at 30-32.

7/ *See* Cox Opposition at 3.

chips receive the same price per megabyte, regardless of the age of their factories or the productivity of their workforces. In competitive markets, companies are compensated for their products, not for their efforts. It is only in monopoly markets where "prudent" — as opposed to productive — investments are compensated.[8/] Since the 1996 Act requires the Commission to adopt rules that foster competition, it is essential that compensation for transport and termination be based on efficient economic principles.

Without a clarification of the FCC's rules to ensure symmetrical compensation, incumbent LECs and new entrants alike will receive full cost compensation for deployment of inefficient network architectures. Incumbent LECs would have little incentive to modernize their network architectures because they would benefit from retaining inefficient configurations. Requiring compensation to be based on the functionality provided by a switch will reverse inefficient incentives and, as described above, create new incentives for the efficient provision of transport and termination by all carriers.

Finally, U S West argues that the Commission should not clarify its symmetry requirement because Section 252(d)(2) requires transport and termination charges to be based on the additional costs of terminating calls.[9/] In its selective focus on only a portion of Section 252(d)(2), U S West misses the import of the remainder of Section 252(d)(2) and of

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8/ The incumbent LEC focus on old monopoly models of the telecommunications marketplace is evident in many of their filings. For instance, Ameritech complains that symmetry could result in "'double dip' recovery" of costs, a concept rooted in the notion that telephone companies are entitled to regulator-guaranteed return of and on their capital investments. Ameritech Opposition at 30. In competitive markets, of course, there is no such guarantee.

9/ U S West Opposition at 18.

Section 251(b)(5). While Section 252(d)(2) requires recovery of transport and termination costs, it also explicitly permits symmetrical arrangements such as bill and keep. 47 U.S.C. § 252(d)(2)(B)(i). Moreover, because regulators are precluded from engaging in "any rate regulation proceeding" to determine appropriate mutual compensation, it is apparent that traditional ratemaking principles cannot be applied to determine transport and termination costs. 47 U.S.C. § 252(d)(2)(B)(ii). Indeed, the very reciprocal compensation obligation in Section 251(b)(5) leads inexorably to regulatory equality and symmetry between the two interconnecting entities.[10/] Thus, a symmetry requirement that focuses on functionality is fully consistent with both Sections 251 and 252.

### B. The Commission Should Recognize that Compensation for Transport and Termination Is Based Solely on Additional Cost.

Teleport and NCTA have asked the Commission to modify the standard for determining compensation for transport and termination to limit that compensation to additional cost.[11/] The Commission has apparently already recognized the differences in 252(d)(1) and 252(d)(2) in its sua sponte reconsideration of switching purchased as an unbundled element.[12/] A further clarification is necessary to align the Commission's

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10/ 47 U.S.C. § 251(b)(5). This symmetry is reflected in the dictionary definitions of "reciprocal" when used in the sense it is used in the Communications Act. For instance, "reciprocal" is defined as "consisting of or functioning as a return in kind" and "mutually corresponding," and "reciprocate" is defined as "to give and take mutually" and "to return in kind or degree." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 983 (1986).

11/ Teleport Communications Group Petition at 8; NCTA Petition at 15-16.

12/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *Order on Reconsideration,* CC Docket No. 96-98, CC Docket No. 95-185, FCC 96-394, rel. September 27, 1996 (the *"Order on Reconsideration"*).

statements in the *First Report and Order* with the requirements of Section 252(d). As the Commission now appears to recognize, Section 252(d) differentiates between the pricing standards for unbundled elements, such as unbundled switching and for transport and termination. Most significantly, because Section 252(d)(2) limits compensation for transport and termination to "additional cost," while Section 252(d)(1) permits inclusion of costs plus profit, it is inappropriate to consider joint and common costs when calculating permissible compensation for transport and termination.[13/] Thus, the Commission should further clarify its rules to eliminate joint and common cost elements from TELRIC calculations for transport and termination.

## III. New Entrants and CMRS Providers Should Be Permitted to Determine the Assigned Locations of Their NXX Codes.

One of the keys to effective competition between a new entrant (whether landline or wireless) and incumbent LECs is the ability to tailor the services the new entrant offers to customer needs. As described in Cox's petition, the power to assign NXX codes to specific rating points within a new entrant's service area, regardless of the location of the new entrant's switch, is an important component in tailoring services to customer needs.[14/] For this reason, several new entrants and wireless carriers support Cox's proposal.[15/]

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13/ 47 U.S.C. § 252(d)(1), (2); *see* Cox Opposition at 13.

14/ Cox Petition at 8-11.

15/ *See* Association for Local Telecommunications Services Opposition at 14; MFS Communications Company Inc. Response at 9-10; AirTouch Communications, Inc. Opposition at 14.

USTA is the only party to oppose permitting wireless new entrants to assign their own rating points. USTA argues that permitting CMRS providers to assign NXX codes to rating points other than their switches would give CMRS providers the right to control LEC pricing decisions and improperly preempt state utility commissions' intrastate ratemaking powers.[16/] These arguments are wrong as a matter of both law and policy.

First, as a matter of law the Commission has plenary authority over numbering matters, as even the incumbent LECs have conceded.[17/] Consequently, the Commission has the power to determine how NXX codes are assigned, a power it has exercised already in the *Second Report and Order* in this proceeding.[18/]

Second, as a matter of policy the Commission should exercise its authority to permit both CMRS providers and landline new entrants to assign NXX codes to rating points in accordance with their assessment of the needs of consumers. USTA appears to believe that allowing CMRS providers to assign NXX codes to rating points other than the CMRS switch will permit callers to CMRS customers to avoid toll charges altogether. That is not the case. Rather, flexibility in NXX code assignment will allow CMRS providers to avoid the current

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16/ USTA Opposition at 40. USTA apparently is willing to concede that landline new entrants should have the ability to determine the geographic locations of their NXX codes, but provides no rationale for distinguishing between CMRS providers and other new entrants.

17/ 47 U.S.C. § 251(e).

18/ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Second Report and Order and Memorandum Opinion and Order,* CC Docket No. 96-98, CC Docket No. 95-185, NSD File No. 96-8, CC Docket No. 92-237, IAD File No. 94-102, FCC 96-333, rel. August 8, 1996 at ¶ 281 (the *"Second Report and Order"*) (describing requirements for assigning NXX codes prior to implementation of area code overlays).

anomalous results that occur because all of a CMRS provider's NXX codes in an area code are associated with a single rating point, even though the customers are not.[19/] Once a customer is assigned a telephone number, all calls that are local to the assigned rating point of the NXX code will be local and calls that are not local will be toll calls. All that will change is that the CMRS provider will be able to associate its NXX codes with more than one rating point. No rates, interstate or intrastate, will be affected. It is not even apparent that LEC revenues would be affected. Even if LEC revenues were affected, there is no public policy reason to prevent CMRS providers or new entrants from assigning NXX codes to ratings points based on the needs of their customers. Indeed, incumbent LECs have had this ability since they began providing telephone service.

Finally, USTA suggests that the issue of rating point assignment for NXX codes could be left to negotiations between CMRS providers and incumbent LECs.[20/] There is no justification for this suggestion. Deciding rating points for NXX codes is an internal business decision that should be based on customer demand and similar considerations. Competitors should have no power to control that decision, through the negotiation process or otherwise. It is undoubtedly for this reason that, while USTA suggests that incumbents should be involved in determining rating points for CMRS and new entrant NXX codes, it

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19/ For instance, under the current regime, all NXX codes associated with CMRS providers using Type 2 interconnection in the San Diego LATA are "located" at a tandem in downtown San Diego. This means that calls to CMRS customers who live and work in outlying areas of San Diego County are local calls for people calling from the city of San Diego, but are toll calls for people calling from outlying parts of the county.

20/ USTA Opposition at 40-41.

does not suggest that CMRS providers and new entrants should have equal involvement in the NXX code decisions of incumbent LECs.

## IV. The Commission Should Require Prompt Filing of Pre-Existing Interconnection Agreements.

No party opposed Cox's request that the Commission reconsider the deadline for Class A LECs to file interconnection agreements that were in place before the enactment of the 1996 Act. Several parties, in fact, endorsed efforts to assure that pre-existing agreements are filed promptly.[21/] As Cox explained in its petition, the availability of existing agreements likely will help resolve arbitrations and other interconnection disputes. In addition, filing existing agreements will not be burdensome. Consequently, the rules should be modified to require Class A LECs to file their agreements with state commissions by December 31, 1996.

Moreover, in light of the urgent deadlines imposed on arbitrations by the 1996 Act and the lack of opposition to this proposal, the Commission should act on this issue on an expedited basis. As the Commission has done in other proceedings, it should sever this issue from the broader issues on reconsideration and issue a separate order addressing this and any other requests that are noncontroversial or require prompt action.[22/]

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21/ *See, e.g.,* AirTouch Opposition at 3-5.

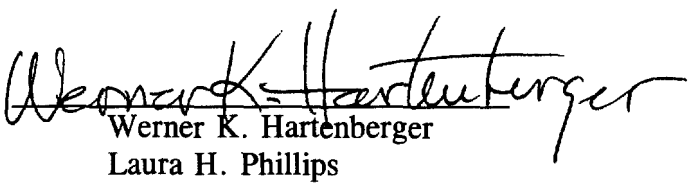
22/ For example, the Commission issued several different orders on reconsideration after the order implementing the 1992 Cable Act. *See, e.g.,* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, *Report and Order and Further Notice of Proposed Rulemaking,* 9 FCC Rcd 4527 (1994) (released March 30, 1994 (initial reconsideration order); Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking,* 9 FCC Rcd 4119 (1994)

## V. Conclusion

For all of these reasons, Cox respectfully requests that the Commission modify the rules adopted in the *First Report and Order* in accordance with this petition.

Respectfully submitted,

**COX COMMUNICATIONS, INC.**



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(released March 30, 1994); Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, *Third Order on Reconsideration,* 9 FCC Rcd 4316, 4318-19 (1994) (released March 30, 1994).

## CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, do hereby certify that on this 12th day of November, 1996, the foregoing "Reply of Cox Communications, Inc. to Oppositions to Petition for Reconsideration" was sent via U.S. first-class mail, postage prepaid, or via hand delivery where indicated, to the following:

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